



McGuire Gardner

40 E. Rio Salado Pkwy., Suite 425
Tempe, AZ 85281
Telephone: (480) 733-6800
Fax: (480) 733-3748
efile.dockets@davismiles.com

Pernell W. McGuire – SBN 015909
M. Preston Gardner – SBN 029868
Attorneys for Debtor

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ARIZONA

In re:	In Chapter 11 Proceedings
GREEN FUEL TECHNOLOGIES, LLC,	Case No.: 2:17-bk-00594-BMW
Debtor.	RESPONSE TO UNITED STATES TRUSTEE'S MOTION FOR DISMISSAL OR CONVERSION OF CASE AND UMB BANK'S JOINDER

Green Fuel Technologies, LLC, the Reorganized Debtor in the above-captioned Chapter 11 case (the “Debtor”), by and through undersigned counsel, hereby responds to the *United States Trustee’s Motion for Status Hearing; to Compel Filing of Post-Confirmation Reports and Payment of Quarterly Fees; for Entry of Judgment for Unpaid Fees; and/or for Dismissal or Conversion of Case [Dkt. #238]* (the “UST Motion”), as well as the *Joinder in United States Trustee’s Motion and Request for Order Compelling Debtor to Immediately Comply with the Plan [Dkt. #242]* (the “Joinder”). In support hereof, the Debtor represents as follows:

1 1. The United States Trustee filed its motion because the Debtor fell behind in its
2 filing of post-confirmation reports and payment of quarterly fees. UMB Bank joined the
3 Trustee's Motion due to the Debtor's failure to provide certain financial records and access
4 to UMB's collateral. The Debtor believes that it has resolved the Trustee's objection, and
5 that it will be able to resolve UMB Bank's concerns within thirty (30) days, if not sooner.
6

7 2. On or about September 24, 2018, the Debtor filed its post-confirmation
8 reports for the first and second quarters of 2018, and paid the outstanding quarterly fees.
9 Moreover, the Debtor is preparing its third quarterly report for 2018 and will file it before
10 the hearing on the Trustee's motion.
11

12 3. The Trustee further questions why the Debtor has not yet sought a final decree
13 and suggests that it may be because the Debtor is not in a position to assert that it has
14 substantially consummated the plan. That is not accurate. As the Debtor's post-
15 confirmation operating reports demonstrate, the debtor has substantially consummated the
16 plan. However, the Debtor has not been able to fully comply with the terms of the Plan with
17 respect to payment of counsel to the Debtor's administrative claim. The Firm has agreed to
18 voluntarily modify its treatment under the plan, and agreed with the Debtor as part of that
19 modification that the case would remain open until additional payments under the parties'
20 agreement were made. At this point, the Debtor fully anticipates seeking a final decree in
21 January 2019.
22
23
24
25
26
27
28

1 4. Around October 15, 2018, the Debtor sent financial records to UMB Bank,
2 including its 2017 tax return, K-1s for John Casey and Kelly Casey, and payment vouchers.
3
4 There was some confusion regarding the exact financial records the Debtor was required to
5 provide to UMB Bank, and the Debtor is in the process of gathering its past financial
6 statements for turnover to UMB Bank and will provide its financial statements to UMB
7 Bank on a monthly basis moving forward.
8

9 5. Debtor asserts that access for UMB Bank's inspection of its collateral has
10 always been available and, to the knowledge of Debtor's principal, has never been denied to
11 UMB Bank. Debtor will continue to provide access for inspection of UMB Bank's
12 collateral upon reasonable notice.
13

14 6. It is important to note that the Debtor has made its monthly payments to UMB
15 Bank as required by the Plan. As the monthly payments are arguably the most important
16 part of the Debtor's post-confirmation obligations, the Debtor asserts that it has
17 substantially complied with the confirmed Plan. Moreover, the Debtor is in the process of
18 remedying its few remaining financial reporting obligations and asserts that it will monitor
19 its financial reporting more closely and ensure that it fully complies moving forward.
20

21 WHEREFORE, the Debtor respectfully requests that the Court deny the relief requested
22 in the UST Motion and Joinder, and for such further relief as is just.
23

24 ///

25 ///
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESPECTFULLY SUBMITTED this 7th day of November, 2018.

DAVIS MILES MCGUIRE GARDNER, PLLC

/s/ M. Preston Gardner
Pernell W. McGuire
M. Preston Gardner
Attorney for Debtor

1 I certify that on November 7, 2018, I electronically filed the foregoing **RESPONSE TO**
2 **UNITED STATES TRUSTEE'S MOTION FOR DISMISSAL OR CONVERSION OF**
3 **CASE AND UMB BANK'S JOINDER** with the Clerk of the Court for the United States
Bankruptcy Court by using the CM/ECF system.

4 I further certify that parties of record in this case who either are registered CM/ECF users, or
5 who have registered for electronic notice, or who have consented in writing to electronic
6 service, will be served through the CM/ECF system.

7 I further certify that some of the parties of record in this case have not consented to electronic
8 service. I have caused a copy of the foregoing document to be placed in the U.S. Mail, First
Class, postage-prepaid to:

9 Amanda Cartwright
10 Bryan Cave, LLP
11 2 N. Central Ave., #2200
12 Phoenix, AZ 85004

13 By: /s/ Joan Stoner
Joan Stoner
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28